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7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF NEVADA

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11 UNITED STATES OF AMERICA, ) 2:09-CR-079-KJD-(RJJ)  
12 Plaintiff, ) GOVERNMENT'S RESPONSE TO  
13 vs. ) DEFENDANT'S OBJECTION TO  
14 HAROLD CALL, ) MAGISTRATE'S REPORT AND  
15 Defendant. ) RECOMMENDATION ON  
DISMISS [DOCKET # 18]  
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17 COMES NOW the United States of America, by and through DANIEL G.  
18 BOGDEN, United States Attorney, and J. Gregory Damm, Assistant United States  
19 Attorney, and files its GOVERNMENT'S RESPONSE TO DEFENDANT'S  
20 OBJECTION TO MAGISTRATE'S REPORT AND RECOMMENDATION ON  
21 DEFENDANT'S MOTION TO DISMISS [DOCKET # 18]. The defendant, Call filed  
22 a Motion to Dismiss on 9/11/2009 (CR # 18), the government responded on 9/24/2009  
23 (CR # 21), and the Magistrate Judge filed a Report and Recommendation on  
24 11/24/2009 (CR # 26). It is from this Report and Recommendation that the defendant  
25 files his objection.  
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1       The defendant first recognizes the authority of *Gonzales v. Raich*, 545 U.S. 1  
2 (2005), but claims that “there is a reasonable possibility the United States Supreme  
3 Court may again reverse itself and find the commerce clause does not extend  
4 jurisdiction to cases such as the instant case.” CR # 28, p. 3, lines 6-8. Defendant  
5 further claims that “because of the vagueness and uncertainty in the law, he asks that  
6 his objection be preserved pending future reconsideration of the issue by the United  
7 States Supreme Court.” CR # 28, p. 3, lines 14-17. The government agrees with the  
8 Magistrate’s assessment that as “the Ninth Circuit expressly held in *United States v.*  
9 *Stewart*, 451 F.3d 1071, 1074 (9<sup>th</sup> Cir. 2006), section 922(o) is a valid exercise of  
10 Congress’s commerce power and can be applied to the manufacture and possession of  
11 homemade machineguns.” CR # 26, p. 4, lines 15-17.

12       Secondly, the defendant claims “that if a weapon is necessary, or even useful, for  
13 self defense and the weapon is not unusually dangerous, and a person has not forfeited  
14 his right to bear arms by previously engaging in criminal conduct, the weapon should  
15 not be banned.” CR # 28, p. 4, lines 4-6. The defendant argues that case authority to  
16 the contrary “should not be binding authority.” CR # 28, p. 3, line 25. The government  
17 concurs with the Magistrate that “nothing in *Heller* [128 S.Ct. 2783, 171 L.Ed.2d 637  
18 (2008)] supports the constitutional challenge to a statute criminalizing the possession  
19 of machineguns. Even after *Heller*, individuals still do not have the right to lawfully  
20 possess machineguns.” CR # 26, p. 5, lines 13-15.

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## **CONCLUSION**

2 WHEREFORE, based upon the foregoing, the United State respectfully requests  
3 that this Court deny defendant Call's Objection to Magistrate's Report and  
4 Recommendation on Defendant's Motion to Dismiss (CR # 28) and affirm the Report  
5 & Recommendation of United States Magistrate Judge (CR # 26) as to Defendant's  
6 Motion to Dismiss # 18.

DATED this 8th day of December, 2009.

Respectfully submitted,

**DANIEL G. BOGDEN**  
United States Attorney

/s/ J. Gregory Damm  
J. GREGORY DAMM  
Assistant United States Attorney

Certificate Of Service

2 I, J. Gregory Damm, hereby certify that I am an employee of the United States  
3 Department of Justice, and that on this day I served a copy of the following:  
4 GOVERNMENT'S RESPONSE TO DEFENDANT'S OBJECTION TO  
5 MAGISTRATE'S REPORT AND RECOMMENDATION ON DEFENDANT'S  
6 MOTION TO DISMISS [DOCKET # 18], upon counsel for all defendants appearing  
7 in this matter via the CM/ECF system, by electronically filing said GOVERNMENT'S  
8 RESPONSE TO DEFENDANT'S OBJECTION TO MAGISTRATE'S REPORT AND  
9 RECOMMENDATION ON DEFENDANT'S MOTION TO DISMISS [DOCKET #  
10 18].

12 Dated: December 8, 2009 /s/ J. Gregory Damm  
13 Assistant United States Attorney  
District of Nevada